

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REBECCA E. S.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C23-1014 RSM

**ORDER REVERSING DENIAL OF
BENEFITS AND REMANDING
FOR FURTHER PROCEEDINGS**

Plaintiff seeks review of the denial of her applications for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB). Plaintiff contends the ALJ erred (1) by rejecting her symptom testimony, (2) rejecting Dr. May's opinion, and (3) at step four. Dkt. 11.¹ As discussed below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

BACKGROUND

Plaintiff is 63 years old and has worked as a home attendant and general clerk. Admin. Record (AR) 31. Plaintiff applied for benefits, alleging disability as of July 1, 2018. AR 67, 73,

¹ Plaintiff's Opening Brief does not entirely comply with the briefing requirements provided in the Court's Scheduling Order, as Plaintiff did not list the alleged errors on the first page of the brief. *See* Dkts. 7 at 2; 11 at 1. In the future, counsel shall take care to review and comply with the Court's briefing requirements.

83. Plaintiff's applications were denied initially and on reconsideration. AR 71, 80, 90. The ALJ conducted a hearing in June 2022, where Plaintiff amended her alleged onset date to November 3, 2020. AR 42–65. In July 2022, the ALJ issued a decision finding Plaintiff not disabled. AR 12–41.

DISCUSSION

The Court may reverse the ALJ's decision only if it is legally erroneous or not supported by substantial evidence of record. *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020). The Court must examine the record but cannot reweigh the evidence or substitute its judgment for the ALJ's. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When evidence is susceptible to more than one interpretation, the Court must uphold the ALJ's interpretation if rational. *Ford*, 950 F.3d at 1154. Also, the Court "may not reverse an ALJ's decision on account of an error that is harmless." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

1. Dr. May

In a letter dated August 17, 2021, neuro-ophthalmologist Dr. May wrote: "1. [Plaintiff] cannot drive. 2. She can only see clearly up close. 3. She has to be able to wear an eye patch, as needed. 4. She can only work continuously for 30 minutes at a time with 30 to 60-minute breaks in between. 5. Has poor depth perception. 5. Fatigues very easily not because of the visual strain." AR 746.

ALJs must consider every medical opinion in the record and evaluate each opinion's persuasiveness, with the two most important factors being "supportability" and "consistency."! *Woods v. Kijakazi*, 32 F.4th 785, 791 (9th Cir. 2022); 20 C.F.R. §§ 404.1520c(a), 416.920c(a). Supportability concerns how a medical source supports a medical opinion with relevant evidence, while consistency concerns how a medical opinion is consistent with other evidence

1 from medical and nonmedical sources. *See id.*; 20 C.F.R. §§ 404.1520(c)(1), (c)(2);
2 416.920(c)(1), (c)(2). Under the new regulations, “an ALJ cannot reject an examining or
3 treating doctor’s opinion as unsupported or inconsistent without providing an explanation
4 supported by substantial evidence.” *Woods*, 32 F.4th at 792.

5 Here, the ALJ found Dr. May’s opinion regarding Plaintiff’s limited driving and ability to
6 only see up close unsupported by his own treatment records. AR 29. The ALJ pointed out that
7 after Plaintiff underwent an operation for an aneurysm, Dr. May found her eye exam findings
8 “pretty stable.” AR 728. Dr. May also wrote that he doubted “there has been a significant
9 increase in her esotropia or possible 6th nerve palsy,” and “[it] is reassuring that the pain is less
10 than it had been.” *Id.* The record also shows Dr. May prescribed plano spectacles for Plaintiff to
11 wear after she reported having double vision. *Id.* Subsequent treatment notes show that
12 although Plaintiff did not get the spectacles, her findings remained “pretty stable.” AR 838.
13 Given the stability of Plaintiff’s findings, even after she did not follow through with Dr. May’s
14 prescription, the ALJ did not err in rejecting these portions of Dr. May’s opinion.

15 As to the rest of the opinion, the ALJ wrote:

16 [Dr. May’s] opinion that [Plaintiff] could only work continuously for 30 minutes at
17 a time with 30 to 60 minute breaks in between may have been supported by his
18 finding that the claimant[] fatigues easily, but he specifically states that this is not
19 from visual strain. Thus, the cause of this fatigue was not worked up by him and []
20 outside of his area of his expertise. Therefore it is not supported by his clinical
21 examination findings.

22 AR 29–30.

23 Plaintiff argues the ALJ misread Dr. May’s opinion and that the physician’s
finding that Plaintiff is only able to work for only 30 minutes at a time is due to visual
strain and therefore within his area of expertise. Dkt. 11 at 8–10 (citing AR 718, 835).

Plaintiff’s argument assumes the ALJ was analyzing Dr. May’s treatment notes from
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1 August 16, 2021, which state, in relevant part, “Straining with her eyes makes her very
2 tired, requiring that she can only do work for 30 minutes at a time but then has to take a
3 break for 30 to 60 minutes.” *See* AR 718, 835. But it was the August 17 letter the ALJ
4 assessed, and the contents of the letter were different from the treatment notes Plaintiff
5 cites to. *Compare* AR 746 with AR 718, 835. In any case, the ALJ’s reasoning—that Dr.
6 May’s opinion was not within his area of expertise—is erroneous because it is predicated
7 on the assumption that Plaintiff’s 30-minute working limitation is related to Plaintiff’s
8 fatigue (that Dr. May stated as unrelated to visual strain). However, reading the letter,
9 Dr. May did not seem to be basing his opinion on said fatigue. *See* AR 746. He listed
10 the two proposed limitations separately and made no indication they were related. *See id.*
11 Because the ALJ’s evaluation is based on a misinterpretation of Dr. May’s opinion, the
12 Court cannot say his reason was supported by substantial evidence. Further, even if
13 fatigue was the basis of this part of Dr. May’s opinion, a medical source’s lack of
14 specialization alone is not the “most important factor” the ALJ must consider when
15 weighing a medical opinion. *See* 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2). Instead,
16 the ALJ must consider a medical opinion’s supportability and consistency, which the ALJ
17 did not do with this specific part of the Dr. May’s opinion. Therefore, in evaluating Dr.
18 May’s opinion, the ALJ erred.

19 **2. Plaintiff’s Symptom Testimony**

20 Plaintiff testified to pain in her lower back, hip, knees, left elbow, shoulder, wrists,
21 fingers, and ankles. AR 56. She stated she has dislocations almost daily and her pain lasts for
22 days. AR 56–57. She explained she has difficulties with standing, walking, and she falls and
23 gets lightheaded when she stands up too quickly. AR 57. She stated she spends 30 to 40

1 minutes laying down every day at any given time. *Id.* Plaintiff also testified that she has been
2 diagnosed with major depression and post-traumatic stress disorder. AR 54. She stated she is
3 forgetful and has difficulties focusing. AR 55. In her function report, Plaintiff wrote that her
4 vision is limiting. AR 258.

5 Where, as here, an ALJ determines a claimant has presented objective medical evidence
6 establishing underlying impairments that could cause the symptoms alleged, and there is no
7 affirmative evidence of malingering, the ALJ can only discount the claimant's testimony as to
8 symptom severity by providing "specific, clear, and convincing" reasons supported by
9 substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). "The standard
10 isn't whether our court is convinced, but instead whether the ALJ's rationale is clear enough that
11 it has the power to convince." *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022).

12 In evaluating Plaintiff's physical symptoms, the ALJ focused on Plaintiff's aneurysm and
13 records after her aneurysm was obliterated in April 2021, implying Plaintiff's symptoms were
14 connected to this condition and that Plaintiff's symptoms improved as a result of her procedure.
15 See AR 24–27. Evidence cited by the ALJ shows that following her procedure, Plaintiff denied
16 focal neurologic deficits, vision loss, weakness in her upper or lower extremities, sensory deficit,
17 or gait instability. AR 667. In another follow-up appointment in October 2021, Plaintiff again
18 reported the same, and her physical examination showed full strength in all muscle groups. AR
19 873. The effectiveness of treatment is relevant to the evaluation of a claimant's alleged
20 symptoms, 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3), but subsequent treatment notes in the
21 record present some ambiguity regarding Plaintiff's physical condition. For example, the ALJ
22 pointed out Plaintiff's physical examination "remained normal," but the treatment note cited only
23 includes psychiatric and neurological findings. See AR 1025. The ALJ pointed out Plaintiff's

1 weight and BMI, but did not explain how this necessarily detracts from Plaintiff's testimony.
2 AR 26 (citing AR 1025). The ALJ also cited Plaintiff's physical examination from May 2022
3 and explained it did not corroborate her subjective reports. AR 26 (citing AR 1031). But there
4 were no actual objective findings from that examination that supports the ALJ's reasoning.
5 Instead, the examination includes notations by Plaintiff's physician regarding possibly needing
6 "further scanning for aneurysms..." given the increase of Plaintiff's joint dislocation. *See* AR
7 1036.

8 The ALJ also noted that because Plaintiff's therapy records included only subjective
9 reports about Plaintiff's joints popping, "the degree in which they result in functional limitations
10 is in question." AR 26. This description of Plaintiff's therapy records is not entirely accurate,
11 because in addition to Plaintiff's subjective reports, they include findings regarding Plaintiff's
12 range of motion and strength. *See* AR 1114–37. The ALJ pointed to a February 2022²
13 appointment but did not explain why the therapy note supports his reasoning as it shows Plaintiff
14 had limited range of motion. *See* AR 1141.

15 In rejecting Plaintiff's testimony regarding her mental health, the ALJ pointed out that
16 Plaintiff's evaluator found her mood, psychomotor, insight, judgment, and abstract thinking
17 impacted by Plaintiff's aneurysm procedure. AR 30 (citing AR 1076). The ALJ's reasoning that
18 Plaintiff's mental symptoms were situational is reasonable given the evaluator's notes. *Tidwell*
19 *v. Apfel*, 161 F.3d 599, 602 (9th Cir. 1998) (finding no error with the ALJ's rejection of the
20 plaintiff's testimony because her symptoms were attributed in part to plaintiff's living situation
21 rather than her mental impairment). The ALJ also pointed to Plaintiff's other mental
22

23 ² The ALJ mistakenly wrote that the therapy note was from December 2020, but the record shows Plaintiff's visit date as "02/02/2022." *See* AR 1141.

1 examinations showing normal psychiatric findings. *See* AR 30 (citing AR 778, 1025). “When
2 objective medical evidence in the record is *inconsistent* with the claimant’s subjective testimony,
3 the ALJ may indeed weigh it as undercutting such testimony.” *Smartt*, 53 F.4th at 498. Here,
4 counseling notes show Plaintiff often appeared oriented with neutral, mild, cheerful, or improved
5 affect. *See* AR 1046, 1054, 1055–57. While Plaintiff did report some lapses in memory, later
6 notes also show she was less distracted and did well. *See* AR 1046, 1055. Given these records,
7 the ALJ did not err in rejecting Plaintiff’s testimony regarding her mental health.

8 The ALJ also did not err in rejecting Plaintiff’s testimony regarding her vision. The ALJ
9 noted Plaintiff had optic neuropathy in her left eye, but nonetheless found her records indicated
10 improvement. *See* 20 C.F.R. §§ 404.1529(c)(3) (the effectiveness of medication and treatment
11 are relevant to the evaluation of a claimant’s alleged symptoms), 416.929(c)(3) (same). The
12 ALJ’s reasoning is supported by the record, which shows Dr. May found her findings “stable”
13 following her aneurysm procedure. AR 728. The record also shows Plaintiff reported double
14 vision in her left eye, for which Dr. May suggested getting spectacles with a prism. *Id.* In a
15 follow-up appointment, Plaintiff reported she did not get the spectacles, but Dr. May again found
16 her findings “pretty stable.” *See* AR 838. Given the stability of Plaintiff’s symptoms, it was
17 reasonable for the ALJ to find Plaintiff’s testimony regarding her vision inconsistent with her
18 record.

19 In sum, the ALJ did not err in rejecting Plaintiff’s testimony concerning her mental health
20 and vision symptoms, given her normal examinations and improvement. However, because the
21 ALJ disregarded probative records concerning Plaintiff’s physical symptoms, the ALJ erred in
22 rejecting this portion of her testimony.

23 **3. Step Four**

Plaintiff contends the ALJ erred in finding she is able to perform her past work based on her RFC. Dkt. 11 at 4–7. The Court need not address this argument, as it has found errors with the ALJ’s evaluation of Dr. May’s opinion and Plaintiff’s symptom testimony, and such errors necessitate reassessment of Plaintiff’s RFC. *See* Social Security Ruling 96-8p (an RFC “must always consider and address medical source opinions”); *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009) (“an RFC that fails to take into account a claimant’s limitations is defective”).

CONCLUSION

For the foregoing reasons, the Commissioner’s final decision is **REVERSED** and this case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g). On remand, the ALJ shall reevaluate Dr. May’s opinion and Plaintiff’s testimony, and reassess Plaintiff’s RFC and all relevant steps of the disability evaluation process. The ALJ shall conduct all further proceedings necessary to reevaluate the disability determination in light of this opinion.

DATED this 30th day of January, 2024.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE